Filed 12/31/08 In re G.B. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re G.B. et al., Persons Coming Under the Juvenile Court Law.	B206211 (Los Angeles County Super. Ct. No. CK64965)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. VICTORIA F., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Daniel Zeke Zeidler, Judge. Affirmed.

Nancy Rabin Brucker, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

Victoria F. (mother) appeals from a juvenile court order adjudicating three of her children, G.B., V.B., and Baby Boy F., dependents of the juvenile court.[1] Mother contends that the juvenile court must be reversed because the juvenile court and the Department of Children and Family Services (DCFS) failed to comply with the provisions of the Indian Child Welfare Act (ICWA).

DCFS concedes that numerous mistakes were made in the preparation of the ICWA notices. However, any mistakes made were harmless error as to G.B. and V.B. They were never removed from the custody of their father and, immediately upon finding the children to be dependents, the juvenile court entered a family law order granting the children's father custody; the juvenile court then terminated jurisdiction over G.B. and V.B. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because this appeal concerns a legal question, namely whether the ICWA notice requirements were satisfied and, if not, whether reversal is appropriate, we only briefly summarize the relevant facts.

Y.G.[2] is detained

Mother first came to the attention of DCFS in March 2006 when her third child,[3] Y.G., tested positive for methamphetamine at birth. Mother also had a positive toxicology for methamphetamine. DCFS later filed a petition pursuant to Welfare and Institutions Code section 300, subdivision (b),[4] on Y.G.'s behalf. Y.G. was detained and suitably placed with her paternal grandmother. Later, the juvenile court sustained the

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1 On December 12, 2008, we granted the motion to dismiss mother's appeal as it pertains to Baby Boy F.

2 Y.G. is not a party to this appeal.

3 G.B. and V.B., the two oldest children, had been living with their father, G.B., Sr., at the time.

4 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

section 300 petition and, ultimately, on August 7, 2007, mother's reunification services were terminated and the matter was set for a selection and implementation hearing.

DCFS files a section 300 petition on behalf of G.B., V.B., and Baby Boy F.

On August 17, 2007, DCFS received a telephone call, advising that mother had given birth to Baby Boy F. and that both mother and Baby Boy F. had tested positive for amphetamines. Although a social worker went to the hospital to interview mother, she was unable to do so. The social worker did interview Baby Boy F.'s father, Steven N. (Steven), who reported that mother had been using drugs.

On August 18, 2007, the social worker interviewed G.B., Sr. G.B. and V.B. had been residing with him for four years, and they had not seen mother in seven to eight months. G.B. and V.B. were placed into protective custody with G.B., Sr.

On August 22, 2007, DCFS filed a section 300 petition on behalf of Baby Boy F., G.B., and V.B. Mother did not appear at the detention hearing. G.B., Sr. appeared and filled out a JV-130 form indicating that he had no Indian ancestry.

At the hearing, the juvenile court stated: "[T[here's never been a case on the siblings' date—on the sibling case of Indian ancestry. The court does not have reason to believe that the children are Indian children as defined by the [ICWA]. The [ICWA] does not apply."

The juvenile court then found that there was a prima facie case for detaining Baby Boy F.; G.B. and V.B. remained in G.B., Sr.'s custody.

Pretrial resolution conference

DCFS's October 1, 2007, report indicated that the ICWA did not apply.

DCFS also reported that Baby Boy F. had been placed in a foster home. DCFS recommended that the juvenile court take jurisdiction over G.B. and V.B. and then terminate jurisdiction, granting G.B., Sr. full physical custody of them.

Adjudication/disposition hearing

At the continued adjudication/disposition hearing, mother completed the JV-130 form, and indicated that she might have Indian ancestry, specifically Cherokee. When the juvenile court questioned mother about the form, she stated that she may have Cherokee blood based upon what her mother had told her. She did not know whether she was enrolled in any of the Cherokee tribes, and she did not know whether her mother was on the tribal "rolls." The juvenile court found that the ICWA may apply and ordered DCFS to explore possible Cherokee heritage.

Continued hearing

In its December 21, 2007, report, DCFS informed the juvenile court that its social worker had spoken to mother to try to obtain information regarding her Indian heritage. Mother did not have any information, but referred the social worker to her mother, Debra E. (Debra); mother provided the social worker with Debra's telephone number. The social worker called Debra on November 30, 2007, but no one answered and there was no voicemail. She also called Debra on December 6, 2007, December 11, 2007, and December 14, 2007, but the telephone number had been disconnected.

Attached to the report was a copy of the notice sent by DCFS on December 14, 2007, to the parents, the Secretary of the Interior, the Regional Director of the Bureau of Indian Affairs in Sacramento, the Bureau of Indian Affairs, the Secretary of the Interior in Washington, D.C., the Eastern Band of Cherokee Indians, the Cherokee Nation of Oklahoma, and the United Keetoowah band of Cherokee Indians. While the notice contains correct information regarding mother and G.B., Sr., it does not set forth complete information regarding mother's ancestry. In particular, it only contains Debra's name and address; no information is provided regarding mother's father (the maternal grandfather). The notice is also inconsistent. While it provides Debra's information, it also indicates that the maternal family claims no Indian heritage. And, while it represents that the paternal family claims no Indian heritage, it inexplicably provides: "Int'd PMG

and PGF's nephew, Mark H.[5] Mr. H. reports that his family has Cherokee heritage from around the civil war. He does not have details and does not know any other paternal family member who has details. Mr. H. reports the Cherokee bloodlines run[] [through] PGF's father and not PGF's mother. He was able to give limited info about the PGGP's."

At the December 21, 2007, hearing, the juvenile court reviewed the ICWA notices. The juvenile court asked mother for the name of her father, and she answered "Roy [F.]" She then stated that her Cherokee heritage came from her mother's side of the family. Based upon this information, the juvenile court ordered DCFS to prepare new ICWA notices, listing Roy F. as the maternal grandfather and indicating that he had no American Indian heritage.

In accordance with the juvenile court's order, DCFS prepared and mailed new ICWA notices. However, these new notices also contained errors. For example, they did not reflect the new hearing date; the notices mistakenly indicated that the hearing date was December 21, 2007. While the notices referenced Roy F., they identified him as a paternal grandfather. And, although the juvenile court had ordered DCFS to send ICWA notices as to all four children, there was no information pertaining to Y.G.

DCFS received signed receipts from the Regional Director of the Bureau of Indian Affairs, the Cherokee Nation of Oklahoma, the Eastern Band of the Cherokee Indians, and the United Keetoowah Band of the Cherokee. On January 2, 2008, the Cherokee Nation replied to DCFS and requested additional information, including Debra's full name and date of birth, as well as dates of birth for everyone and the maiden names of all of the women.

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5 The social worker did not indicate which father (G.B., Sr. or Steven) was related to Mark H.

Continued adjudication/disposition hearing

At the January 16, 2008, hearing, the juvenile court noted that the JV-135 form was incomplete because it did not include Debra's information. It then questioned mother about her Indian heritage. In response to the juvenile court's query, mother explained that, as far as she knew, neither she nor her parents were registered with a tribe. The juvenile court then found that it did not have reason to know that the children were Indian children, and determined that the ICWA did not apply.

The juvenile court then found that G.B., V.B., and Baby Boy F. were children described by section 300, subdivisions (b) and (j). After taking jurisdiction as to G.B. and V.B., the juvenile court terminated jurisdiction, with a family law order granting G.B., Sr. full physical and legal custody of those two children.

Mother's timely appeal from the juvenile court's jurisdictional and dispositional findings and orders made on January 16, 2008, ensued.

DISCUSSION

ICWA Notice Requirements

"The ICWA, enacted by Congress in 1978, is intended to 'protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.' [Citation.] 'The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource.' [Citation.]

"'The ICWA confers on tribes the right to intervene at any point in state court dependency proceedings. [Citations.] "Of course, the tribe's right to assert jurisdiction over the proceeding or to intervene in it is meaningless if the tribe has no notice that the action is pending." [Citation.] "Notice ensures the tribe will be afforded the opportunity to assert its rights under the [ICWA] irrespective of the position of the parents, Indian custodian or state agencies." [Citation.]' [Citation.]" (*In re Karla C.* (2003) 113 Cal.App.4th 166, 173–174; see also *In re H.A.* (2002) 103 Cal.App.4th 1206, 1210.)

Notice Was Defective Under the ICWA

The ICWA contains the following notice provision: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided,* That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding." (25 U.S.C. § 1912(a).)

As DCFS concedes, the ICWA notice requirement was not satisfied. We thus turn our attention to the issue of what remedy is appropriate to correct this error. Mother seeks reversal of the juvenile court's jurisdictional findings and dispositional orders; she also asks that the matter be remanded with instructions that the juvenile court comply with ICWA's notice requirements.

Regarding G.B. and V.B., any Error was Harmless

Courts disagree as to whether the ICWA requires notice in all dependency proceedings. (Compare *In re Alexis H.* (2005) 132 Cal.App.4th 11, 14 [The ICWA "requires notice only when child welfare authorities seek permanent foster care or termination of parental rights; it does not require notice *anytime* a child of possible or actual Native American descent is involved in a dependency proceeding"] with *In re Jennifer A.* (2002) 103 Cal.App.4th 692, 699–701.) Regarding G.B. and V.B., we need not decide whether the ICWA required proper notice to the Cherokee tribe. Because DCFS did not seek foster care or the termination of parental rights, and because G.B. and V.B. remained placed at all times with G.B., Sr., the failure to provide proper ICWA

notice amounts to harmless error. (*In re Alexis H., supra*, at p. 16.) Thus, the juvenile court's order is affirmed.

DISPOSITION

As to G.B. and V.B., the juvenile court's order is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD